REMARKS

Status of the Claims

Claims 1-9, 11-20 and 23-29 are presently pending, claims 10 and 21-22 having been previously canceled and claims 28-29 having been added herein.

Support for new claim 28 can be found, for example, in paragraph [0037] of the specification

Support for new claim 29 can be found, for example, in original claims 22 and 23, as well as in paragraphs [0036] to [0040] of the specification, see, in particular, paragraph [0037].

The current facts are like those of *In re Wertheim*, 541 F.2d 257, 191 USPQ 90 (CCPA 1976), wherein original specification included a range of "25%- 60%" and specific examples of "36%" and "50%." A corresponding new claim limitation to "at least 35%" did not meet the description requirement because the phrase "at least" had no upper limit and caused the claim to read literally on embodiments outside the "25% to 60%" range, however a limitation to "between 35% and 60%" did meet the description requirement. See also MPEP 2163.05.

Here, a range of 10°C or less is found for the glass transition temperature in original claim 23, whereas a specific example of a glass transition temperature of -50°C is given in paragraph [0037] of the specification, thus providing support for a glass transition temperature of -50°C or less.

Objections

Claim 23 is objected to under 37 CFR 1.75(c) as being of improper dependent form as it depends from a canceled claim. This rejection is moot in view of the amendment of claim 23 herein.

Claim Rejection under 35 USC 112, second paragraph

Claim 23 is rejected under 35 USC 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter. This rejection is moot in view of the amendment of claim 23 herein.

35 USC 103(a)—Pinchuk, Ruckenstein, Hossainy, and Reference Polymer Properties

Claims 1-7, 9, 11-20 and 23-27 are rejected under 35 USC 103(a) as being unpatentable over Pinchuk et al., US 2002/0107330 (Pinchuk) in view of Ruckenstein et al., WO 00/59968 (Ruckenstein) taken further in view of Hossainy et al., US 2001/0014717 (Hossainy) as evidenced by *Reference Polymer Properties* article (RPP). This rejection is respectfully traversed.

For example, Pinchuk discloses an intravascular or intervascular medical device comprising a therapeutic agent-releasing biocompatible block polymer, wherein the polymer is a copolymer that may be linear triblock or branched copolymer, said copolymer comprising elastomeric blocks (specifically, polyolefin blocks) and thermoplastic blocks (specifically, vinyl aromatic blocks or methacrylate blocks), especially poly(methyl methacrylate). Moreover, the copolymer may comprise units that have glass transition temperatures above and below ambient temperature.

Pinchuk does not disclose graft copolymers. Pinchuk also prefers polyolefin blocks as the elastomeric (rubbery) blocks, and is silent regarding a rubbery block of rubbery acrylic units such as a poly(alkyl acrylate), poly(haloalkyl acrylate) or poly(cyanoalkyl acrylate) blocks (see claim 13), for example a poly(butyl acrylate) block (see claim 14).

According to the Examiner, however, Ruckenstein discloses that great attention has been paid to graft copolymers, due to their unique molecular architecture, particular morphology, and increased number of applications. Even assuming solely for the sake of argument that this is true, however, Ruckenstein nonetheless does not make up for the above noted deficiencies in Pinchuk, for example, because Ruckenstein does not teach or suggest acrylate graft copolymers, but rather discloses copolymers with methacrylate groups.

In the present Office Action, the Examiner further states that Hossainy discloses that drug-delivering-coatings for implantable devices such as stents and methods for forming the same (title), and that the device can be coated with a layer containing an acrylate polymer such as methyl acrylate (which has a Tg of 10°C) and a therapeutic agent.

Based on the above, the Examiner argues that at the time of the invention it would have been obvious to a person of ordinary skill in the art to create an insertable or implantable medical device (e.g., stent) containing elastomeric and thermoplastic block copolymers as described in Pinchuk by grafting Pinchuk 's copolymers as described in Ruckenstein. The motivation for grafting the copolymers would have been to control not only the properties of the

surface, but also the molecular parameters, architecture, and composition of the polymer as these are disclosed as being advantageous over other types of polymers as explained in Ruckenstein. Applicant respectfully disagrees.

First, Hossainy describes copolymers of monomers that include methyl acrylate, but does not teach or suggest an acrylic graft copolymer like that claimed, much less an acrylic graft copolymer comprising (i) a rubbery block of rubbery acrylic units and (ii) a hard block of hard units like that claimed. Similar deficiencies exist in the other references including Pinchuk, which doesn't disclose any graft copolymer whatsoever, and Ruckenstein, which doesn't disclose rubber acrylic units like those claimed (instead disclosing copolymers comprising methacrylate units). Nor does Ruckenstein, or any other cited reference, teach the desirability of combining a rubbery and hard blocks within a given graft copolymer.

Consequently, it is respectfully submitted that the present claims are patentable over Pinchuk, Ruckenstein, Hossainy, and Reference Polymer Properties.

35 USC 103(a)—Pinchuk, Ruckenstein, Hossainy and Williams

Claim 8 is rejected under 35 USC 103(a) as being unpatentable over Pinchuk, Ruckenstein and Hossainy as evidenced by *Reference Polymer Properties*, and taken in view of Williams, U.S. 6,514,515 (Williams). Applicant respectfully traverses this rejection.

The present claims are patentable over Pinchuk, Ruckenstein, Hossainy, and Reference Polymer Properties for the reasons set forth above. Williams, which is cited for its teachings including elongation at break, does not make up for these deficiencies.

Consequently, it is respectfully submitted that the present claims are patentable over Pinchuk, Ruckenstein, Hossainy, Reference Polymer Properties and Williams.

Conclusion

Should the Examiner be of the view that an interview would expedite consideration of the application, request is made that the Examiner telephone the Applicants' attorney at (703) 433-0510 in order to resolve any outstanding issues.

Respectfully submitted,

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